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UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of

SPEERS, et al.

Serial No.: 10/522,347

PCT No.: PCT/US03/22737

Int. Filing Date: 22 July 2003

Priority Date: 22 July 2002

Atty Docket No.: 016276-9079-01 (4966-IR-BK)

For: CONVEYOR WITH COGGED BELT
AND ROLLER SUPPORT RAIL

DECISION ON PETITION

UNDER 37 CFR 1.47(a)

This decision is in response to the petition under 37 CFR 1.47(a) filed 13 February 2006 in the United States Patent and Trademark Office (USPTO) to accept the application without the signature of joint inventor Sergio Olguin.

BACKGROUND

On 22 July 2003, applicant filed international application PCT/US03/22737 which claimed priority to a previous U.S. application filed 22 July 2002. Pursuant to 37 CFR 1.495, the deadline for entering the National stage in the United States was set to expire thirty months from the priority date, or 22 January 2005.

On 24 January 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1). 22 January 2005 being a Saturday, payment of the U.S. Basic National fee was timely.

On 11 July 2005, applicant was mailed a "Notification of Missing Requirements" (Form PCT/DO/EO/905) indicating that an executed oath or declaration of the inventors was required, as well as, payment of the \$130.00 surcharge for providing an executed oath or declaration later than thirty months from the earliest claimed priority date. Applicant was afforded two months to file a proper response and advised that this period could be extended pursuant to 37 CFR 1.136(a).

On 13 February 2006, applicant filed the present petition under 37 CFR 1.47(a) accompanied by a petition for a five-month extension of time and payment of the appropriate extension of time fee. With payment of the extension of time fee, the present response is considered timely filed.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor. Applicant has satisfied items 1, 3 and 4.

Regarding item (1), as authorized, the \$200.00 petition fee under 37 CFR 1.17(g) will be charged to deposit account 13-3080.

As to item (2), as stated in the Manual of Patent Examination Procedure (MPEP), Section 409.03(d) Proof of Unavailability or Refusal, "Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature." Neither the enclosed declaration of Mr. Mark A. Ussai nor the supporting exhibits indicate that the non-signing inventor, Mr. Olguin was provided with a complete set of the application papers; but merely a declaration and assignment for signature. While, Mr. Olguin's continued silence would constitute a refusal to cooperate under 37 CFR 1.47(a); this conduct cannot be accepted as such absent the presentation of a complete set of application papers.

In light of the above, it is not possible to grant applicant's petition at this time.

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.47(a) is **DISMISSED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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